IN THE HIGH COURT OF UTTARANCHAL AT NAINITAL

Court's order whether the case is or not approved for reporting

Chapter VIII, Rule 32(2) (b)
Description of case

No. 634 of 2003 (M/S) decided on 17.07.2003

National Insurance co. Ltd.----------Petitioner
Vs
Addl. District Judge, MACT. Derhadun---------
Respondents

A.F.R. (Approved for Reporting)
~~Not approved for reporting~~

Date:-17/7/2003 Initials of Judge

Note:- Bench Reader will attach this at the top of the first page of the judgment when it is put up before the Judge for signature.

COURT NO.3

HIGH COURT OF UTTARANCHAL AT NAINITAL

Writ Petition no.634 OF 2003 (M/S)

CIVIL SIDE

National Insurance Co. Ltd; …….Petitioner

Versus

Addl. District Judge, M.A.C.T. Dehradun …….Respondents.

Hon'ble Rajesh Tandon, J.

Heard Sri D.S. Patni, Advocate for the petitioner.

The present writ petition has been filed by the National Insurance Company Ltd; with the following prayer:

1. *Issue any appropriate order or direction, directing the respondent no. 1 to defer the case no. 242 listed on 21.7.2003 to any other date after one month.*
2. *Any other order or……"*

The petitioner in the writ petition has stated that against the award dated 9.5.2000 passed by the Motor accident Claim Tribunal, Dehradun he has preferred an appeal under section 173 of M.V. Act, with a delay of 5 days and application under section 5 of Limitation Act has also been filed in which notices were issued. As the record of appeal has not been transferred from Allahabad High Court in the mean time execution has started before the execution Court.

In my opinion the writ petition is misconceived and is liable to be rejected in as much as Article 227 of the Constitution of India cannot be used as a weapon for giving directions for postponement of execution proceedings. The petitioner is at the liberty to move proper application

in the appeal itself before this Court or where the appeal is pending.

Moreover, from the facts on record it appears that the appeal was preferred along with the application under section 5 of Limitation Act and, therefore, no orders were passed on the appeal itself. The counsel for the petitioner has also stated that there is no stay in the appeal pending before Allahabad High Court.

Under the aforesaid circumstances I do not find any reason in passing any order for staying the proceedings of case n.242 of 2002 before the executing court.

The writ petitioner, therefore, is dismissed. However, if the petitioner prays before the Executing court for time to deposit the amount, the same may be considered in accordance with law.

(Rajesh Tandon, J.)

18.07.2003
Dhyani